

Emer. _____
P. Hrngs. _____
Pgs. 16
Filed: 08-07-12

Sponsored by: Rushefsky, Bieker
Fisk, Rush

First Reading: _____

Second Reading: _____

COUNCIL BILL NO. 2012- 226

GENERAL ORDINANCE NO. _____

AN ORDINANCE

1 AMENDING Chapter 2, Administration, Article IV, Boards, Commissions and
2 Committees, Division 4, Mayor's Commission on Human Rights and
3 Community Relations, section 2-223; and Chapter 62, Human Rights, to
4 add sexual orientation and gender identity to the list of categories of
5 persons protected from discrimination, to consolidate the Commission's
6 investigative process into a single division of the Code, and to clarify the
7 Commission's powers in light of recent court decisions. (The Community
8 Involvement Committee recommends approval)
9 _____

10
11 WHEREAS, the Mayor's Commission on Human Rights and Community
12 Relations ("Commission") is charged with fostering mutual understanding and respect
13 while preventing discrimination among all communities in Springfield; and
14

15 WHEREAS, the current powers and duties of the Commission do not include
16 discrimination on the basis of sexual orientation and gender identity as grounds for
17 complaint or investigation in the areas of employment, housing, public accommodations
18 and in general; and
19

20 WHEREAS, it is necessary for the protection of our citizens to amend the powers
21 and duties of Commission to include the prevention, education against, and
22 investigation of discrimination on the basis of sexual orientation and gender identity; and
23

24 WHEREAS, it is necessary to establish a clear process by which the Commission
25 investigates and resolves disputes relating to human rights.
26

27 NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF
28 SPRINGFIELD, MISSOURI, as follows:
29

30 NOTE: Underlined language has been added. Language to be removed is ~~stricken~~.

31
32 Section 1 – The Springfield City Code, Chapter 2, Administration, Article IV,
33 Boards, Commissions and Committees, Sec. 2-223 is hereby amended as follows:
34

35 Sec. 2-223. - Powers and duties.
36

37 The powers and duties of the commission established by this division shall be to:
38

- 39 (1) Foster, through community effort or otherwise, good will, cooperation and
40 conciliation among the groups and elements of the inhabitants of this
41 community.
42
- 43 (2) Formulate and carry out educational programs that will aid in eliminating and
44 preventing all types of prejudice and discrimination based on race, creed, sex,
45 handicap, age, national origin, ~~or ancestry~~, sexual orientation or gender
46 identity.
47
- 48 (3) Receive, hear and investigate complaints, as outlined in chapter 62, and
49 initiate its own investigations, and report to the city council on the following:
50 a. Racial, religious and ethnic group tensions, prejudice, intolerance, bigotry
51 and discrimination, and any breach of the peace or disorder occasioned
52 thereby.
53
54 b. Practices of discrimination against any person in employment, recreation,
55 education, housing and other phases of public welfare because of race,
56 creed, sex, handicap, age, national origin, ~~or ancestry~~, sexual orientation,
57 gender identity, or any other basis of discrimination prohibited under
58 chapter 62.
59
- 60 (4) Initiate and conduct voluntary surveys, assemble pertinent data, hold hearings,
61 issue such publications and such reports of investigations and research as, in
62 its judgment, will tend to minimize or eliminate prejudice, intolerance, bigotry,
63 discrimination, breach of peace or disorder, or tend to promote good will.
64
- 65 (5) Create such advisory committees and subcommittees as, in its judgment, will
66 aid in effectuating the purposes of this division and to empower it to study the
67 problems of prejudice, intolerance, bigotry and discrimination, and breach of
68 peace or disorder occasioned thereby.
69
- 70 (6) Enlist the cooperation of all racial, religious and ethnic groups, community,
71 civic, labor and business organizations, fraternal and benevolent associations,
72 veterans' organizations and other groups in educational campaigns and
73 programs devoted to teaching the need for eliminating group tensions,
74 prejudices, intolerances, bigotry and discrimination, and breach of peace and
75 disorder occasioned thereby.
76
- 77 (7) Make recommendations to the city council concerning the development of

78 policies and procedures that will aid in eliminating all types of discrimination
79 based on race, creed, sex, handicap, age, national origin, ~~or~~ ancestry, sexual
80 orientation, gender identity, or any other basis of discrimination prohibited
81 under chapter 62.
82

83 (8) Recommend to the city council legislation to aid in carrying out the purposes of
84 this division.
85

86 (9) Hold public hearings and request the attendance of witnesses when the
87 commission deems it necessary or advisable to accomplish its purposes.
88

89 Section 2 – The Springfield City Code, Chapter 62, Human Rights, Article II, Fair
90 Employment Practices, Division 1, Generally, Sections 62-32, 62-34, 62-35, 62-36, 62-
91 37, 62-38 and 62-40 are hereby amended as follows:
92

93 Sec. 62-32. - Definitions.
94

95 The following words, terms and phrases, when used in this article, shall have the
96 meanings ascribed to them in this section, except where the context clearly indicates a
97 different meaning:
98

99 Complaint means a written charge of discrimination alleging that a person has engaged
100 in a discriminatory practice.
101

102 Complainant means a person who has filed a complaint with the commission alleging
103 that another person has engaged in a discriminatory practice.
104

105 Discriminatory practice means an act that is unlawful under sections 62-33, 62-34, 62-
106 63, 62-82, and 62-103.
107

108 Employer means a person who employs one or more persons, exclusive of parents,
109 spouses or children of such person, and who has a place of business in the city. The
110 word "employer" shall include, and the word "person" shall include when used for the
111 word "employer," the city and the boards and agencies of the city.
112

113 Employment agency means any person or agency, public or private, regularly
114 undertaking with or without compensation to procure employees for an employer or to
115 procure for employees opportunities to work for an employer and includes any person
116 acting in the interest of such a person.
117

118 Gender identity means the gender-related identity, appearance, or mannerisms or other
119 gender-related characteristics of an individual, with or without regard to the individual's
120 designated sex at birth.
121

122 Labor organization includes any organization which exists for the purpose, in whole or in
123 part, of collective bargaining or of dealing with employers concerning grievances, terms
124 or conditions of employment, or for other mutual aid or protection of employees in

125 relation to employment.

126
127 *Person* has the same meaning as set forth in section 1-2.

128
129 *Person with a disability* means a person with a physical or mental impairment which
130 substantially limits one or more of the person's major life activities, a person regarded
131 as having such an impairment, or a person with a record of having such an impairment,
132 which with or without reasonable accommodation does not interfere with performing the
133 job, utilizing the place of public accommodation, or occupying the dwelling in question.
134 For purposes of this article, the term "disability" does not include the current illegal use
135 of or addiction to a controlled substance as such term is defined by RSMo 195.010;
136 however, a person may be considered to have a disability if that person:

- 137
138 (1) Has successfully completed a supervised drug rehabilitation program and is
139 no longer engaging in the illegal use of, and is not currently addicted to, a
140 controlled substance, or has otherwise been rehabilitated successfully and is
141 no longer engaging in such use and is not currently addicted;
142
143 (2) Is participating in a supervised rehabilitation program and is no longer
144 engaging in illegal use of controlled substances; or
145
146 (3) Is erroneously regarded as currently illegally using, or being addicted to, a
147 controlled substance.

148
149 *Qualified person with a disability* means a person with a disability who can perform the
150 essential functions of the job in question with or without reasonable accommodation.

151
152 *Reasonable accommodation* means the following:

- 153
154 (1) Making facilities used by employees readily accessible to and usable by
155 persons with disabilities; and
156
157 (2) Job restructuring, part-time or modified work schedules, acquisition or
158 modification of equipment or devices, or the provision of readers or interpreters;
159 and other similar actions, provided such accommodations do not create an
160 undue hardship.

161
162 *Undue hardship* means an accommodation which imposes an economic burden on the
163 employer which is excessive. Factors to be considered in determining whether or not
164 there is an undue burden are:

- 165
166 (1) The overall size of the employer's program with respect to number of
167 employees, number and type of facilities, and size of budget;
168
169 (2) The type of the employer's operation, including the composition and structure of
170 the recipient's work force; and
171

172 (3) The nature and cost of the accommodation needed.

173
174 Sexual orientation means male or female homosexuality, heterosexuality and
175 bisexuality, by preference, practice or as perceived by others, but not including sexual
176 preference or practice between an adult and a minor.

177
178 Sec. 62-34. - Unlawful employment practices.

179
180 It shall be an unlawful employment practice:

- 181
182 (1) For an employer, because of the age, race, creed, color, disability, religion,
183 sex, national origin, ~~or~~ ancestry, sexual orientation or gender identity of any
184 individual, to fail or refuse to hire, or to discharge, any individual, or otherwise
185 to discriminate against any individual with respect to his compensation, terms,
186 conditions or privileges of employment; or for an employer to limit, segregate
187 or classify his employees in any way which would deprive or tend to deprive
188 any individual of employment opportunities or otherwise adversely affect his
189 status as an employee because of such individual's age, race, creed, color,
190 disability, religion, sex, national origin, ~~or~~ ancestry, sexual orientation or
191 gender identity.
- 192
193 (2) For a labor organization to exclude or expel from its membership an individual
194 or to discriminate in any way against any of its members or against any
195 employer or any individual employed by an employer; because of age, race,
196 creed, color, disability, religion, sex, national origin, ~~or~~ ancestry, sexual
197 orientation or gender identity of any individual; or to limit, segregate or classify
198 its membership, or to classify or fail or refuse to refer for employment any
199 individual in any way which would deprive or tend to deprive the individual of
200 employment opportunities, or would limit such employment opportunities or
201 would otherwise adversely affect an individual's status as an employee or as
202 an applicant for employment, because of the individual's age, race, creed,
203 color, disability, religion, sex, national origin, ~~or~~ ancestry, sexual orientation or
204 gender identity; or for any employer, labor organization or joint labor-
205 management committee controlling apprenticeship or training or retraining,
206 including on-the-job training programs, to discriminate against any individual
207 because of his age, race, creed, color, disability, religion, sex, national origin,
208 ~~or~~ ancestry, sexual orientation or gender identity in admission to, or
209 employment in, any program established to provide apprenticeship or training.
- 210
211 (3) For any employer or employment agency to print or circulate or cause to be
212 printed or circulated any statement, advertisement or publication, or to use any
213 form of application for employment, or to make any inquiry in connection with
214 prospective employment, which expresses directly or indirectly any limitation,
215 specification or discrimination because of age, race, creed, color, disability,
216 religion, sex, national origin, ~~or~~ ancestry, sexual orientation or gender identity
217 unless based upon a bona fide occupational qualification, or for an
218 employment agency to fail or refuse to refer for employment, or otherwise

discriminate against, any individual because of his age, race, creed, color, disability, religion, sex, national origin, or ancestry, sexual orientation or gender identity, or to classify or refer for employment any individual on the basis of his age, race, creed, color, disability, religion, sex, national origin, or ancestry, sexual orientation or gender identity.

- (4) For any employer, labor organization or employment agency to discharge, expel or otherwise discriminate or retaliate in any manner against any individual because the individual has opposed any practices forbidden under this article, or because the individual that filed a complaint testified or assisted in any proceeding or hearing conducted pursuant to this article.
- (5) For any person, whether an employer or employee or not, to aid, abet, incite, compel or force the doing of any acts forbidden under this article or to attempt to do so.
- (6) To discriminate in any manner against any person because of such person's association with any person protected by this article.
- (7) Nothing in this article shall be taken to prohibit a religious organization, association or society, or any nonprofit institution or organization operated, supervised or controlled by or in conjunction with a religious organization, association or society and whose purpose and character are primarily religious, from giving employment preference to members of its own religion, unless membership in such religion, organization or society is restricted on account of race, color, national origin, sex, age or disability.

Sec. 62-35. - Bona fide tests or conditions not unlawful.

Notwithstanding any other provisions of this article, it shall not be an unlawful employment practice for an employer to apply different standards of compensation or different terms, conditions or privileges of employment pursuant to a bona fide seniority or merit system or a system which measures earnings by quantity or quality of production or to employees who work in different locations, provided that such differences or such systems are not the result of an intention or a design to discriminate and are not used to discriminate because of age, race, creed, color, disability, religion, sex, national origin, or ancestry, sexual orientation or gender identity, nor shall it be an unlawful employment practice for an employer to give and to act upon the results of any professionally developed ability test, provided that such test, its administration, or action upon the results thereof is not designed, intended or used to discriminate against an individual because of age, race, creed, color, disability, religion, sex, national origin, or ancestry, sexual orientation or gender identity.

263
264 Sec. 62-36. - Preferential treatment not required.
265

266 Nothing contained in this article shall be interpreted to require any employer,
267 employment agency, labor organization or joint labor-management committee subject to
268 this article to grant preferential treatment to any individual or to any group because of
269 the age, race, creed, color, disability, religion, sex, national origin, ~~or ancestry,~~ sexual
270 orientation or gender identity of such individual or group, on account of an imbalance
271 which may exist with respect to the total number or percentage of persons of any age,
272 race, creed, color, disability, religion, sex, national origin, ~~or ancestry,~~ sexual orientation
273 or gender identity employed by any employer, referred or classified for employment by
274 any employment agency or labor organization, admitted to membership or classified by
275 any labor organization, or admitted to or employed in any apprenticeship or other
276 training programs, in comparison with the total number of percentage of persons of such
277 age, race, creed, color, disability, religion, sex, national origin, ~~or ancestry,~~ sexual
278 orientation or gender identity in the city or other area.
279

280 Sec. 62-37. - Complaints generally.
281

282 Any individual who claims to have been grieved by an employment practice made
283 unlawful under this ~~chapter-article~~, referred to in this ~~chapter-article~~ as a "discriminatory
284 practice," may file a complaint in writing with the commission. The complaint shall be
285 under oath and shall contain such information and be in such a form as the commission
286 shall require. Immediately upon the filing of a complaint, the commission shall furnish a
287 copy of the complaint to the person alleged to have committed an unlawful
288 discriminatory practice. All investigations, penalties, and other processes related to
289 complaints of discriminatory practices in the areas of fair housing, employment, and
290 public accommodations shall be conducted pursuant to guidelines established in this
291 article.
292

293 Sec. 62-38. - Time limit for filing complaint; answer to complaint.
294

295 A complaint under section 62-37 shall be filed within ~~60~~ 180 days after the alleged
296 discriminatory practice occurred. The written complaint shall state the facts upon which
297 the complainant believes that a discriminatory practice unlawful under this article has
298 occurred. Complaints may be reasonably and fairly amended at any time with the
299 approval of the chairperson of the commission. The person complained about (referred
300 to in this article as the "respondent") may file an answer to a complaint against him,
301 which may also be amended with the permission of the chairperson of the commission,
302 which shall be granted whenever it is reasonable and fair to do so. Complaints and
303 answers to complaints shall be verified.
304

305 Sec. 62-40. - Investigatory powers of commission.
306

307 In the course of any investigation authorized under this article, the commission shall
308 have access at all reasonable times to premises, records, documents, individuals or
309 other evidence or possible sources of evidence, and may examine, record and copy

310 such materials and take and record the testimony or statements of such persons as are
311 reasonably necessary for the furtherance of the investigation as interpreted by *Yellow*
312 *Freight Sys., Inc. v. Mayor's Commission on Human Rights of City of Springfield*. The
313 ~~chairperson of the commission shall have the power to issue subpoenas to compel~~
314 ~~witnesses to attend public or private meetings during the investigatory process under~~
315 ~~section 62-39 and to produce at such meetings relevant books or records with regard to~~
316 ~~the matter under investigation; provided, however, no such subpoena shall require any~~
317 ~~appearance during any such investigatory stage sooner than five days from the date~~
318 ~~such subpoena shall be served, and the party subpoenaed shall have three days from~~
319 ~~the date of service to move the municipal court to quash the subpoena. If such a motion~~
320 ~~is made, the court may continue the date for compliance with such subpoena as~~
321 ~~necessary to rule on the motion, but for no longer than ten days from the original date~~
322 ~~set for compliance. A copy of such motion shall be served upon the city attorney as~~
323 ~~counsel for the mayor's commission.~~

324
325 Section 3 – The Springfield City Code, Chapter 62, Human Rights, is hereby
326 amended by moving the section entitled Minority business enterprise program from
327 Section 62-42 and placing it in Chapter 62, Human Rights, Article I, Generally, as
328 Section 62-1.

329
330 Section 4 – The Springfield City Code, Chapter 62, Human Rights, Article II, Fair
331 Employment Practices, Division 1, Generally, is hereby adding new Sections 62-43, 62-
332 44 and 62-45, as follows:

333
334 Sec. 62-43. - Dispute Resolution, Finding of Probable Cause.

- 335
336 (a) In addition to the investigatory powers enumerated in section 62-40, before
337 investigating a complaint of discriminatory practices in the areas of employment,
338 fair housing, or public accommodations, the commission shall determine if the
339 complainant and respondent are willing to resolve the issues described in the
340 complaint through mediation or some other method of dispute resolution. If the
341 complainant and respondent are willing, the investigator shall facilitate dispute
342 resolution. The complainant and respondent may engage in dispute resolution at
343 any stage in the process. If the complainant and respondent resolve the dispute
344 prior to investigation, the case shall be closed.
345
346 (b) If the complainant and respondent are unwilling to attempt dispute resolution or
347 are unsuccessful in such an attempt, the investigator shall promptly investigate
348 the allegations of the complaint.
349
350 (c) After completing the investigation, the commissioners conducting the
351 investigation shall report to the commission the results of the investigation and
352 their opinion on whether there is probable cause to credit the allegations of the
353 complaint.
354
355 (d) After receiving the investigation report, the commission may direct further
356 investigation. When the commission is satisfied that the complaint has been

properly investigated, it shall determine whether there is probable cause to credit the allegations of the complaint. If the commission determines that there is no probable cause, it shall dismiss the complaint. If the commission determines that there is probable cause, it shall attempt to have the issue resolved through mediation or some other method of dispute resolution. If the respondent is unwilling to participate in dispute resolution, or the dispute resolution does not successfully resolve the complaint, the commission may forward the matter to the city prosecutor.

(e) At any stage in the process, prior to the referral to the city prosecutor, the commission may close its investigation and dismiss the complaint. Such reasons shall include but not be limited to the following:

- (1) There is no probable cause to credit the complaint;
- (2) The complainant has failed to cooperate with the commission;
- (3) The commission is unable to locate the complainant or respondent;
- (4) The complainant wishes to withdraw the complaint;
- (5) The subject matter of the complaint has been satisfactorily investigated and resolved by another governmental agency; or
- (6) The complainant has filed a lawsuit against respondent involving the subject matter of the complaint.

Sec. 62-44. - Prosecution; time limitations.

- (a) No prosecution for a violation of any provision of this chapter, other than section 62-45, shall be commenced unless a complaint shall have first been filed with the commission and efforts of the commission to eliminate the alleged violation have failed.
- (b) The period of limitation for any violation of this article shall not run during any time while a complaint involving the alleged violation is pending before the commission.

Sec. 62-45. - Unlawful retaliation; false complaints.

- (a) It shall be unlawful for any person to retaliate or discriminate in any manner against any other person because such person has opposed any practice prohibited by this chapter or because such person has filed a complaint, assisted or participated in any manner in any proceeding conducted pursuant to this article.
- (b) It shall be unlawful to knowingly make a false complaint under the provisions of

404 this article. Any person knowingly making a false complaint shall, upon
405 conviction thereof, be punished as provided by section 1-7.
406
407

408 Section 4 – The Springfield City Code, Chapter 62, Human Rights, Article III, Fair
409 Housing, Sections 62-133, 62-134, 62-135, 62-136, 62-139 and 62-148 are hereby
410 amended as follows:
411

412 Sec. 62-133. - Penalty.
413

414 Any person who shall violate any of the provisions of this article ~~or who shall fail to obey~~
415 ~~process issued under section 62-143 requiring attendance at a meeting and/or the~~
416 ~~production of documents at a meeting~~ shall be punished upon conviction thereof in a
417 municipal court as provided by section 1-7.
418

419 Sec. 62-134. - Discrimination in sale or rental of real property.
420

421 It shall be unlawful for any person to:
422

- 423 (1) Refuse to sell or rent after receipt of a bona fide offer for, or refuse to negotiate
424 for the sale or rental of, or otherwise make unavailable or deny, real property to
425 any person because of that person's race, creed, color, sex, religion, disability,
426 familial status, national origin, or ancestry, sexual orientation or gender identity.
427
- 428 (2) Discriminate against any person in the terms, conditions or privileges of sale or
429 rental of real property, or in the provision of services or facilities in connection
430 therewith, because of race, creed, color, sex, religion, disability, familial status,
431 national origin, or ancestry, sexual orientation or gender identity.
432
- 433 (3) Make, print or publish, or cause to be made, printed or published, any notice,
434 statement or advertisement with respect to the sale or rental of real property
435 that indicates any preference, limitation or discrimination based on race, creed,
436 color, sex, religion, disability, familial status, national origin, or ancestry, sexual
437 orientation or gender identity, or an intention to make any such preference,
438 limitation or discrimination.
439
- 440 (4) Represent to anyone because of race, creed, color, sex, religion, disability,
441 familial status, national origin, or ancestry, sexual orientation or gender identity
442 that any real property is not available for inspection, sale or rental when such
443 real property is in fact so available.
444
- 445 (5) For profit, induce or attempt to induce anyone to sell or rent any real property by
446 representations regarding the entry or prospective entry into the neighborhood
447 of persons of a particular race, creed, color, sex, religion, disability, familial
448 status, national origin, or ancestry, sexual orientation or gender identity.

449
450 Sec. 62-135. - Discrimination in residential real estate related transactions.
451

452 (a) *Generally.* It shall be unlawful for any person or other entity whose business
453 includes engaging in residential real estate related transactions to discriminate
454 against any person in making available such a transaction, or in the terms or
455 conditions of such a transaction, because of race, color, religion, sex, disability,
456 familial status, ~~or~~ national origin, sexual orientation or gender identity.
457

458 (b) *Definition.* As used in this section, the term "residential real estate related
459 transaction" means any of the following:
460

461 (1) The making or purchase of loans or providing other financial assistance:

462 a. For purchasing, constructing, improving, repairing or maintaining a
463 dwelling; or
464

465 b. Secured by residential real estate.
466

467 (2) The selling, brokering or appraising of residential real property.
468

469 (c) *Appraisals.* Nothing in this article prohibits a person engaged in the business of
470 furnishing appraisals of real property from taking into consideration factors other
471 than race, color, religion, national origin, sex, disability, ~~or~~ familial status, sexual
472 orientation or gender identity.
473
474

475 Sec. 62-136. - Discrimination in provision of brokerage services.
476

477 It shall be unlawful for any person to deny to any other person access to or membership
478 or participation in any multiple listing service, real estate brokers' association or other
479 service organization or facility relating to the business of selling or renting real property,
480 or to discriminate against any person in terms or conditions of such access,
481 membership or participation, because of race, creed, color, sex, religion, disability,
482 familial status, national origin, ~~or~~ ancestry, sexual orientation or gender identity.
483
484

485 Sec. 62-139. - Complaints, Investigations, Penalties. ~~Complaints generally.~~
486

487 Any person who claims to have been injured by a discriminatory practice as made
488 unlawful by this article (referred to in this article as the "complainant") may file a
489 complaint in writing with the commission. The investigation of those complaints,
490 penalties associated, and all other related processes shall be conducted pursuant to
491 article 2, division 1 of this chapter. ~~Complaints shall contain such information and be in~~
492 ~~such a form as the commission shall require. Immediately upon the filing of a complaint,~~
493 ~~the commission shall furnish a copy of the complaint to the person alleged to have~~
494 ~~committed an unlawful discriminatory practice.~~

495
496 Sec. 62-148. - Enforcement by city attorney.
497

498 ~~(a) The commission, in the event of a failure to secure voluntary compliance with the~~
499 ~~requirements of this article, shall cause the chairperson thereof to certify, in writing, to~~
500 ~~the city attorney that all reasonable efforts of the commission to secure conciliation and~~
501 ~~compliance are concluded in the matter, and the commission shall, with such~~
502 ~~certification, transmit the commission file and the transcript of the meeting, if any, to the~~
503 ~~city attorney and in all other respects cooperate with him.~~
504

505 ~~(b) Upon certification by the commission, the city attorney, if he finds that there is~~
506 ~~probable cause to believe that a violation of any of the provisions of this article has~~
507 ~~occurred and that there is probable cause to believe that the respondent is guilty of that~~
508 ~~violation, may institute proceedings in municipal court for prosecution of the violation.~~
509

510 (a) ~~(e)~~ Whenever the city attorney has reasonable and probable cause to believe that
511 any person or group of persons has engaged in a pattern or practice of resistance to the
512 full enjoyment of any of the rights granted by this article, or that any group of persons
513 has been denied any of the rights granted by this article, he may bring a civil action in
514 the circuit court of the county, setting forth in his petition in such cause the facts and
515 requesting such preventive relief, including injunctive relief, against the person
516 responsible for the pattern or practice of resistance as to him may seem reasonably
517 necessary to ensure the full enjoyment of the rights granted by this article and to
518 prevent such violations thereof.
519

520 (b) ~~(d)~~ The commission may certify complaints directly to the city attorney's office for
521 legal action under this section without conducting a meeting whenever the commission
522 finds that any person or group of persons has engaged in a continued pattern of
523 resistance to the full enjoyment of any of the rights granted under this article. The filing
524 of previous complaints and the finding of probable cause for such complaints by the
525 commission against a person shall constitute grounds for the commission finding that
526 such person is engaged in a continued pattern of resistance to the full enjoyment of the
527 rights granted by this article.
528

529 Section 5 – The Springfield City Code, Chapter 62, Human Rights, Article III, Fair
530 Housing, sections 62-140, 62-141, 62-142, 62-143, 62-144, 62-145, 62-149, and 62-150
531 shall be repealed.
532

533 Section 6 – The Springfield City Code, Chapter 62, Article IV, Public
534 Accommodations, sections 62-181, 62-182 and 62-183 shall be amended as follows:
535

536 Sec. 62-181. - Definitions.
537

538 The following words, terms and phrases, when used in this article, shall have the
539 meanings ascribed to them in this section, except where the context clearly indicates a
540 different meaning:
541

542 Discriminatory practice means an act that is unlawful under section 62-182 or 62-187.

543
544 *Hotel and motel* means every establishment offering lodging to transient guests for
545 compensation, other than bona fide private clubs.

546
547 *Passenger transportation system* means publicly or privately owned, operated or
548 managed buses, taxicabs, airlines, airplanes or trains normally carrying passengers for
549 hire within or from the city, and shall include all of the stations, terminals and facilities
550 appurtenant thereto.

551
552 *Place of entertainment* means those places, things or events open to the public, such as
553 motion picture theaters, legitimate theaters, circuses, fairs, carnivals, athletic exhibitions
554 or contests including but not limited to boxing, wrestling, football and baseball
555 exhibitions and contests, athletic fields, amusement parks, playgrounds and parks,
556 bowling alleys, swimming pools, auto races, pool halls, dances and dance halls, golf
557 courses, shooting galleries and ranges, skating rinks, miniature golf courses, fireworks
558 shows or exhibitions, go-cart tracks, horse, dog and flower shows and exhibits, beauty
559 shows or pageants, and all other similar places, exhibitions or contests open to the
560 public, whether publicly or privately owned, operated or managed.

561
562 *Restaurant* means every cafe, cafeteria, coffeeshop, sandwich shop, snackbar, supper
563 club, soda fountain, ice cream parlor, luncheonette, tavern or bar or other similar
564 establishment which offers food or drink for purchase and consumption on the
565 premises, other than bona fide private clubs.

566
567 *Services* means professional, semiprofessional, personal, educational or commercial.

568
569 Sec. 62-182. - Discrimination prohibited.

570
571 It shall be unlawful for any person offering for a consideration services, public
572 accommodations or passenger transportation, or for the agent, operator or manager of
573 such person, to refuse, withhold from or deny to any person such services, public
574 accommodations or passenger transportation for any reason, directly or indirectly,
575 related to the age, race, creed, color, sex, religion, ancestry, national origin, or disability,
576 sexual orientation or gender identity of such person. However, nothing contained in this
577 section shall be construed to prohibit any person from having a special event such as
578 women's bowling night, men's bowling night, women's or men's bridge night, or other
579 similar events which limit the event or activity to individuals of a particular sex, except
580 such special events shall not occur on a regular basis so as to defeat the intent of this
581 section.

582
583 Sec. 62-183. - Complaints, Investigations, Penalties, generally. ~~Filing, investigation and~~
584 ~~resolution of complaints; enforcement by city attorney.~~

586 All complaints of discriminatory practices shall be heard by the commission, and the
587 investigation of those complaints, penalties associated, and all other related processes
588 shall be conducted pursuant to section 62-37.
589

590 ~~(a) The mayor's commission on human rights and community relations shall receive~~
591 ~~and investigate, in accordance with rules established by the commission, all~~
592 ~~complaints of alleged violations of this article, with assistance from the staff of the~~
593 ~~law department of the city and any other persons whom the commission may find~~
594 ~~useful in the investigation and processing of the complaint. Any three members of~~
595 ~~the mayor's commission shall have the power to act on behalf of the whole~~
596 ~~commission in a matter concerning this article. The chairperson of the commission~~
597 ~~shall have the power to issue subpoenas to compel witnesses to attend public or~~
598 ~~private meetings and to produce at such meetings relevant books or records with~~
599 ~~regard to the matter under investigation. The failure to comply with any such~~
600 ~~subpoena shall be punishable in municipal court in accordance with the provisions~~
601 ~~of section 1-7; provided, however, no subpoena shall require any appearance within~~
602 ~~five days from the date such subpoena shall be served and the parties subpoenaed~~
603 ~~shall have three days from the date of service to move the municipal court to quash~~
604 ~~the subpoena. If such a motion is made, the court may continue the time for~~
605 ~~compliance with such subpoena as necessary to rule on the motion, but for no~~
606 ~~longer than ten days from the original date set for appearance. A copy of such~~
607 ~~motion is to be served upon the city attorney as counsel for the mayor's~~
608 ~~commission. The chairperson of the commission or any member of the commission~~
609 ~~directed to investigate a complaint shall have the power to place any person under~~
610 ~~oath relating to any matter under investigation.~~
611

612 ~~(b) No complaint shall be filed more than 60 days after the date of the alleged violation~~
613 ~~of section 62-182, and all complaints shall be in writing and under oath. After the~~
614 ~~filing of any complaint, the chairperson shall appoint at least two and not more than~~
615 ~~three commissioners to promptly investigate the complaint. If it is determined after~~
616 ~~the investigation that probable cause exists for crediting the allegations of the~~
617 ~~complaint, the commissioners shall immediately endeavor to eliminate the unlawful~~
618 ~~discriminatory practice complained of by conference, conciliation and persuasion,~~
619 ~~and shall report the results to the entire commission. The investigation,~~
620 ~~determination of probable cause and conciliation shall be conducted according to~~
621 ~~such rules, regulations and guidelines as the commission shall prescribe. The~~
622 ~~members of the commission and its staff shall not disclose the content of the report~~
623 ~~or what has transpired in the course of such endeavors.~~
624

625 ~~(c) The commission, or those representing the whole commission, shall determine~~
626 ~~whether probable cause exists to believe that the complaint is justified, and shall~~
627 ~~adjust complaints by education, persuasion and conciliation if possible, as promptly~~
628 ~~as possible, within the applicable time limits.~~
629

630 ~~(d) If the commission or those acting on behalf of the commission find that their efforts~~
631 ~~are unsuccessful, or in any event if the complaint shall not have been resolved~~
632 ~~within the maximum time after receipt of the complaint, the commission shall at such~~

time refer the complaint to the law department of the city with the commission's recommendation thereon, with a copy thereof to be sent to the complainant and to the person complained about by ordinary mail.

(e) The commission may certify complaints directly to the city attorney's office for legal action under this section without conducting a meeting whenever the commission finds that any person or group of persons has engaged in a continued pattern of resistance of full employment of any of the rights granted under this article. The filing of previous complaints and the findings of probable cause for such complaints by the commission against a person shall constitute grounds for the commission finding that such person is engaged in a continued pattern of resistance to the full employment of the rights granted in this article.

Section 7 – The Springfield City Code, Chapter 62, Human Rights, Article IV, Public Accommodations, section 62-184 shall be repealed in its entirety.

Section 8 – Severability Clause. If any section, subsection, sentence, clause or phrase of this ordinance is for any reason held to be invalid or unenforceable, to the extent the remainder of this ordinance can be validly and reasonably interpreted and enforced, such decision shall not affect the validity of the remaining portions of this ordinance.

Section 9 – This ordinance shall be in full force and effect from and after passage.

Passed at meeting: _____

Mayor

Attest: _____, City Clerk

Filed as Ordinance: _____

Approved as to form: , City Attorney

Approved for Council action: , City Manager

N:\SHARE\ORLANDO\WfDan\Sogi_Draft.docx

EXPLANATION TO COUNCIL BILL NO. 2012-

FILED: 08-07-12

ORIGINATING DEPARTMENT: Law

PURPOSE: To amend Chapter 2, Administration, Article IV, Boards, Commissions and Committees, Division 4, Mayor's Commission on Human Rights and Community Relations, section 2-223; and Chapter 62, Human Rights, to add sexual orientation and gender identity to the list of categories of persons protected from discrimination, to consolidate the Commission's investigative process into a single division of the Code, and to clarify the Commission's powers in light of recent court decisions.

BACKGROUND:

The classes of individuals currently protected under Chapter 62 are age, race, creed, color, disability, religion, sex, national origin and ancestry. Chapter 62 deals with discrimination in three areas: Employment, Housing, and Public Accommodations. This protection is enforced by the Mayor's Commission on Human Rights, which is established under Chapter 2 of the City Code.

REMARKS:

This bill was drafted at the request of the Mayor's Commission on Human Rights, for the purpose of adding sexual orientation and gender identity to the protected classes under Chapter 62 of the City Code. The bill also deletes a number of repetitive sections for the purpose of combining all the administrative provisions of the Chapter into a single division. Finally, Sections 62-142 through 147 were deleted to clarify the Commission's powers due to the decision in *Yellow Freight System v. Mayor's Commission on Human Rights* (Mo. App. Ct. S.D. 1987).

Here is a chart showing the deleted sections and the remaining sections that mirror them:

Deleted section	Remaining section
62-140	62-38
62-141	62-39
62-142 – 62-147	Deleted because of <i>Yellow Freight</i> case
62-149	62-40
62-150	62-41
62-184	62-45

Submitted by:


Dan Wichmer, City Attorney

Approved by:


Greg Burris, City Manager